

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FRANCIS THOMAS FAHY,

No. C 08-2496 CW

Plaintiff,

v.

JUSTICES OF THE CALIFORNIA SUPREME
COURT, ET AL.,

ORDER DENYING
PLAINTIFF'S
APPLICATION FOR
LEAVE TO PROCEED
IN FORMA PAUPERIS

Defendants.

_____ /

Plaintiff Francis Thomas Fahy requests leave to proceed in forma pauperis (IFP) pursuant to 28 U.S.C. § 1915(a). The Ninth Circuit has indicated that leave to proceed IFP is properly granted only when the plaintiff has demonstrated poverty and has presented a claim that is not factually or legally frivolous within the definition of § 1915(e)(2)(B).¹ O'Loughlin v. Doe, 920 F.2d 614,

¹Section 1915(e)(2)(B) states:

. . . the court shall dismiss the case at any time if the court determines that--

(B) the action or appeal--

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a

1 616 (9th Cir. 1990); Tripati v. First Nat'l Bank & Trust, 821 F.2d
2 1368, 1370 (9th Cir. 1987). In the Ninth Circuit, the court grants
3 or denies IFP status based on the plaintiff's financial resources
4 and then independently determines whether to dismiss the complaint
5 on the grounds that it is frivolous. Franklin v. Murphy, 745 F.2d
6 1221, 1226 n.5 (9th Cir. 1984). An affidavit supporting IFP status
7 is sufficient if it states that the plaintiff cannot, because of
8 his poverty, pay the court costs and still provide himself and
9 dependents with the necessities of life. Adkins v. E.I. Du Pont de
10 Nemours & Co., Inc., 335 U.S. 331, 339 (1948).

11 Plaintiff's IFP application states that he is currently
12 employed and earns \$1,800 in gross wages per month. Plaintiff
13 further states that: (1) he has a bank account with a negative \$200
14 balance; (2) he owns \$100 in cash; (3) he has no other debt; and
15 (4) he has no dependents. Plaintiff owns a 1991 automobile.
16 Plaintiff states he has monthly expenses of \$700 for rent, \$300 for
17 utilities, \$500 for food and \$200 for clothing.

18 Plaintiff need not be completely destitute to proceed IFP.
19 Id. at 339-40. However, the Court finds that Plaintiff, an
20 individual earning \$1,800 with no debt and no dependents, has not
21 established that paying the \$350 filing fee will prevent him from
22 providing himself with the necessities of life. Cf. California v.
23 Moore, 2008 U.S. Dist. LEXIS 38354, *2-3 (S.D. Cal.) (individual
24 who is \$23,300 in debt, has one dependent, owns car and has monthly

25 _____
26 defendant who is immune from such
27 relief.
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1 income of \$2,770 is not eligible to proceed IFP); Ross v. San
2 Diego County, 2008 WL 440413, *1 (S.D. Cal.) (individual who
3 carries "significant debt," has monthly income of \$2,100 per month
4 and owns car and home is not eligible to proceed IFP). Therefore,
5 the Court DENIES Plaintiff's motion for leave to proceed IFP.

6 Because the Court denies Plaintiff's IFP application, the
7 merits of his claim are not addressed.

8 CONCLUSION

9 For the foregoing reasons, Plaintiff's request for leave to
10 proceed IFP is DENIED. If Plaintiff wishes to pay the \$350 filing
11 fee he may do so within sixty days of the date of this order. If
12 he does not do so, his complaint will be dismissed without
13 prejudice and the case will be closed.

14 IT IS SO ORDERED.

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17 Dated: 7/1/08



18 CLAUDIA WILKEN
19 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

FRANCIS T. FAHY,
Plaintiff,

Case Number: CV08-02496 CW

CERTIFICATE OF SERVICE

v.

CA SUPREME COURT JUSTICES et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 1, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Francis Thomas Fahy
259 Oak Street
San Francisco, CA 94102

Dated: July 1, 2008

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk

United States District Court
For the Northern District of California